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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 74-9381

In Re: Petition for Rehearing and Reconsideration of Acting Commissioner's Order Discharging Anthony Lausche, Mentally Ill and Dangerous

ANTHONY LAUSCHE, PETITIONER

vs.

COMMISSIONER OF PUBLIC WELFARE
AND
COUNTY OF OTTER TAIL, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE STATE OF MINNESOTA

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January 27, 1975

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PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE STATE OF MINNESOTA

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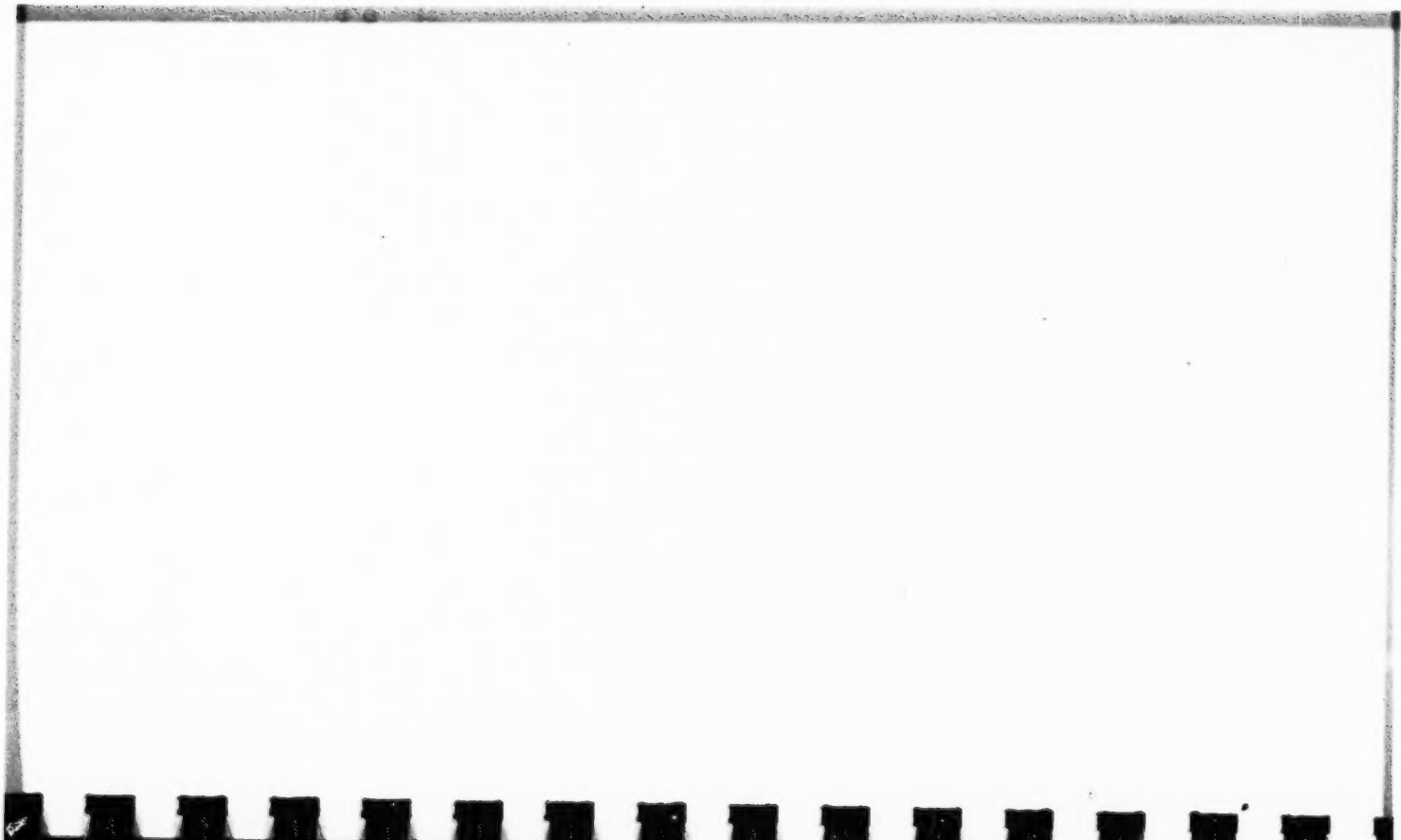
The Petitioner, Anthony Lausche, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Minnesota entered in this proceeding on November 1, 1974.



OPINION BELOW

The opinion of the Minnesota Supreme Court, not yet reported, appears in the Appendix hereto at A.1 through A.9. The Order and Opinion of the Probate Court Appeal Panel appears in the Appendix hereto at A.10 through A.15. The Findings and Order of the Special Review Board are found in the Appendix hereto at A.16 through A.17.

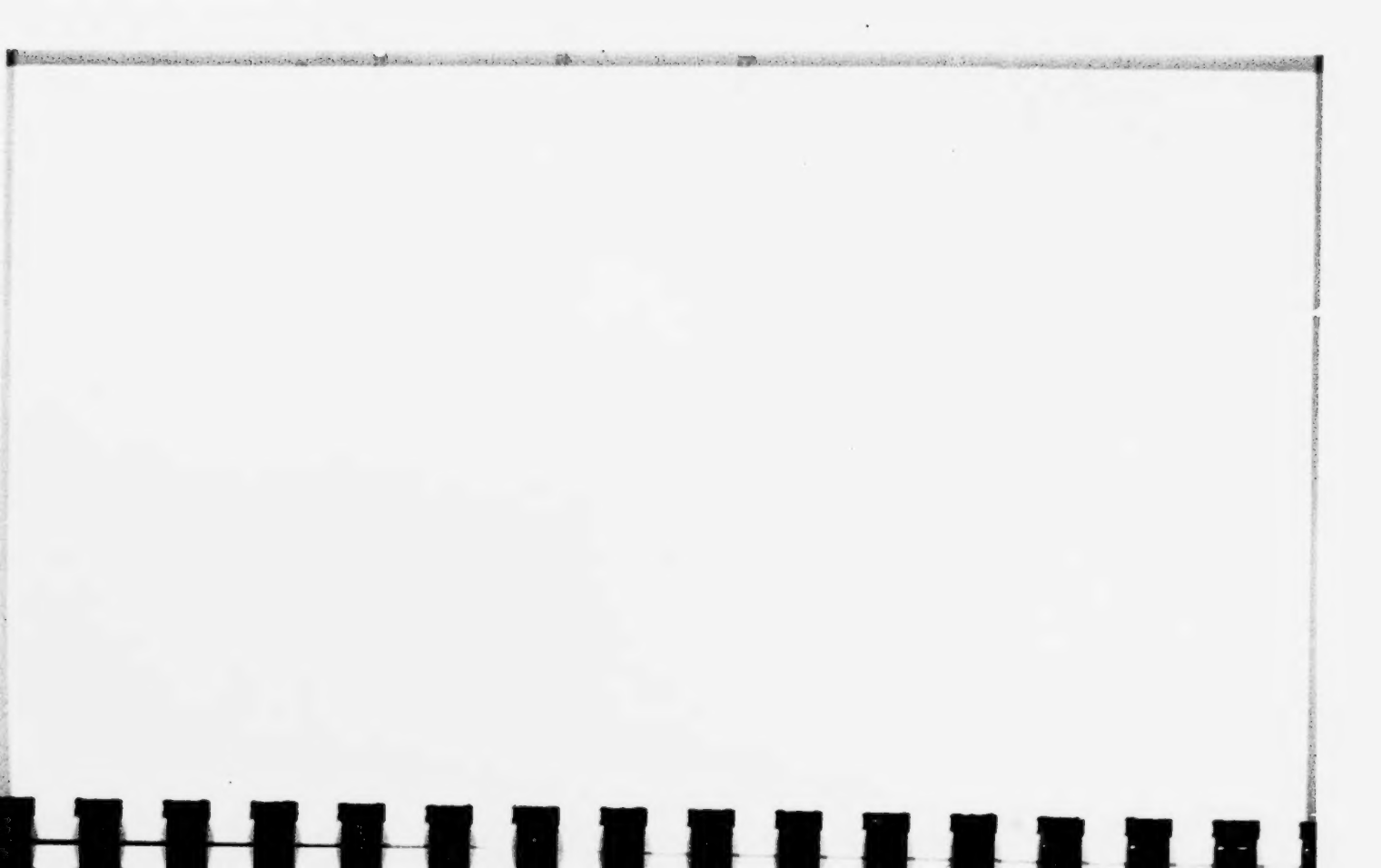
JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was entered on November 1, 1974 and this Petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Does the Minnesota Confinement Statute violate constitutional requirements when interpreted to permit the commitment of a reasonable individual solely on the grounds that such individual will be a danger to society?

2. Does the Minnesota Confinement Statute violate constitutional requirements when interpreted to apply the proof of standard of "fair preponderance of the evidence" rather than "beyond a reasonable doubt" to procedures for discharge from commitments thereunder?



STATUTORY PROVISIONS INVOLVED

Minnesota Statutes Section 253A.02 subd. 3:

"Mentally ill person" means any person having a psychiatric or other disorder which substantially impairs his mental health and who is in need of treatment or supervision.

Minnesota Statutes Section 253A.02 subd. 17:

"A person dangerous to the public" means a person who is mentally ill or mentally deficient and whose conduct might reasonably be expected to produce a clear and present danger of injury to others.

CONSTITUTIONAL PROVISIONS INVOLVED

The Consitutional provisions involved are equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States of America.

STATEMENT OF THE CASE

Petitioner, Anthony Lausche, is about 30 years of age and has been in various mental and correctional institutions since he was a teenager. His current mental condition is labeled as "sociopath" or "character disorder".

On December 19, 1969 his present commitment began when he was judicially committed to the Minnesota Security Hospital at St. Peter, Minnesota as "mentally ill and dangerous" under Minnesota Statute 253A

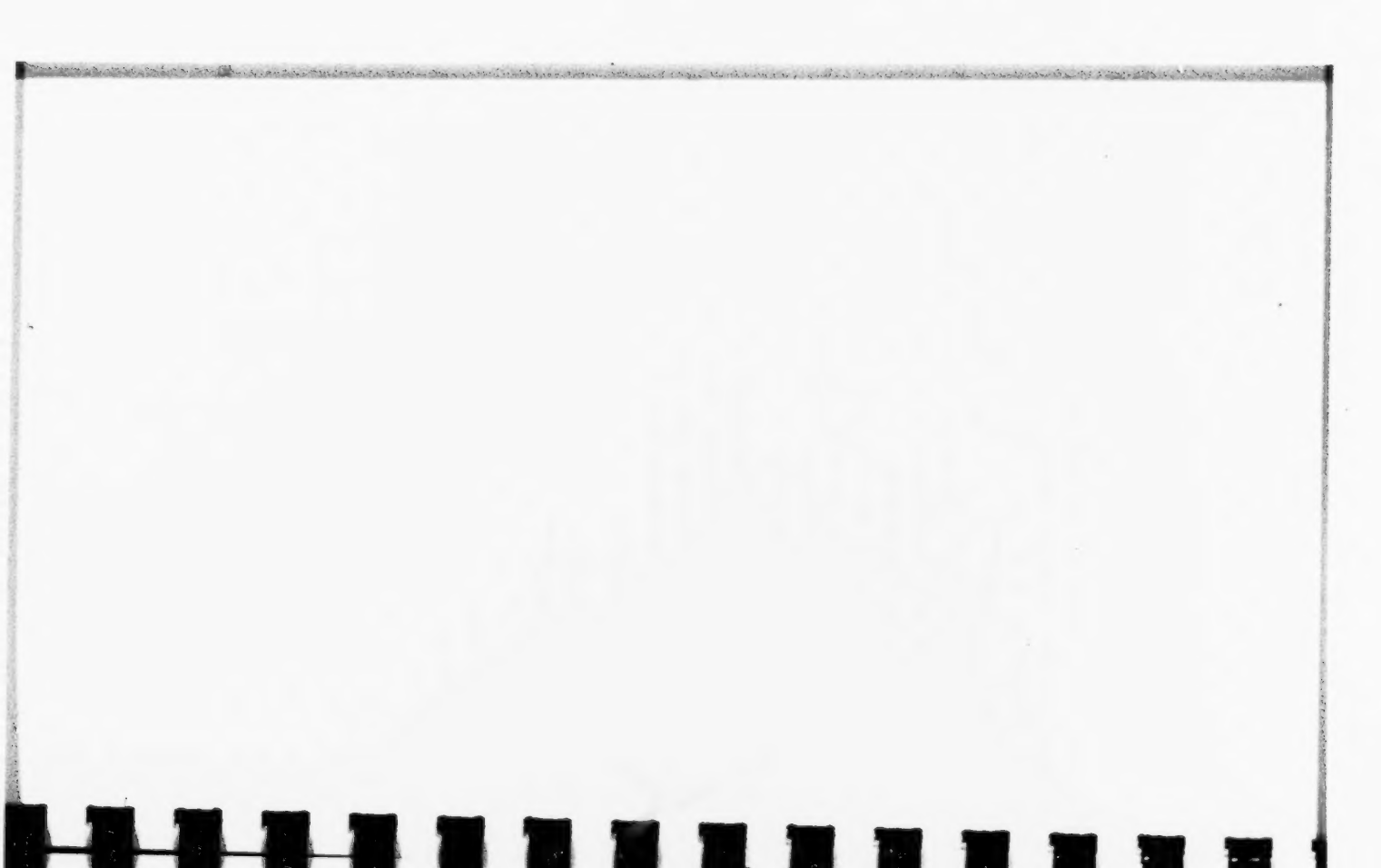
by Henry Polkinghorn, Judge of Probate Court, Otter Tail County, Minnesota.

Following the filing of the 60-day report, as required by MSA 253A.07, subd. 23, in which Dr. G. G. Sheppard, Medical Director of the Minnesota Security Hospital, stated that "it is our opinion Mr. Lausche (Petitioner) is not mentally ill", and gave a diagnosis of "personality disorder, inadequate personality", Judge Polkinghorn reconsidered his previous finding and entered a final judgment committing Petitioner to the custody of the Superintendent of the Minnesota Security Hospital at St. Peter, Minnesota, for an indeterminate period, as a person who is "mentally ill and dangerous to the public".

Petitioner remained at the Minnesota Security Hospital at St. Peter for approximately two years and was then transferred to the Brainerd State Hospital, Brainerd, Minnesota.

On February 26, 1972, at a local bar, the Vogue Dugout, Petitioner became involved in an altercation with a girl over a remark she made and assaulted her. He was charged with aggravated assault and placed in the Crow Wing County Jail.

A petition was filed for discharge from the mental commitment and pursuant to Minnesota Statutes Section 253A.15, subd. 15, a Special Review Board reviewed Petitioner's case on April 5, 1972 and made Findings of Fact that Petitioner was dangerous to society, requiring custodial care and incarceration for the rest of his



life. A decision on this petition was withheld pending disposition of the criminal charges.

Petitioner then pled guilty to the pending assault charge and was sentenced to up to five years in Stillwater State Prison, a Minnesota correctional facility.

On June 28, 1972, the Special Review Board met again and made findings to the effect that Petitioner is on a continual cycle of institutionalization and that something need be done to break this dependency cycle on institutions. They recommended complete discharge from his commitment as "mentally ill and dangerous" and that "the prison staff make all efforts to rehabilitate this man".

Pursuant to a petition for rehearing and reconsideration duly filed by Harlan L. Nelson, County Attorney, Otter Tail County, Minnesota, a three-judge appeal panel was convened and on October 18, 1972 heard additional testimony relative to Petitioner's mental commitment.

The Appeal Panel reversed Petitioner's discharge from commitment and made the following findings: That Petitioner had made improvement, but was still "mentally ill and dangerous" within the meaning of the commitment statute; that Petitioner was suffering from a defect labeled a "sociopath or a character disorder"; that Petitioner may act impulsively to do violence when subjected to stressful situations; that confinement in itself does have some effect on sociopaths; that there is a need for further programming in this

case with more emphasis on rehabilitation and vocational training. The Appeal Panel ordered that Petitioner remain in Stillwater State Prison until his release when he must be returned to the Minnesota Security Hospital at St. Peter, Minnesota.

The Supreme Court of Minnesota subsequently reviewed the Appeal Panel's decision and affirmed that decision, holding: (1) that the determinative question of whether a person should be committed to a mental hospital is whether that person, if not so committed, would be a danger to society. Considerations such as whether hospitalization would be in vain are not relevant if it is shown the person is dangerous; and (2) that the standard to be applied in a case involving a petition for release and an appeal therefrom is the civil standard of a fair preponderance of the evidence.

REASONS FOR GRANTING THE WRIT

1. The decision below raises significant questions regarding the power of the State to commit certain persons to mental institutions.

The Supreme Court of Minnesota, in interpreting the Minnesota Commitment Statute, Chapter 253A, held that the determining factor as to whether a person should be committed to the State's mental institutions is whether such person will be a danger to society. This holding raises two fundamental constitutional questions:

a. Does the State have the power to commit responsible persons who are a danger to society to mental institutions?

b. Does the State have the power to commit responsible persons who are a danger to society to mental institutions when such institutions do not offer a treatment program that will benefit the committed person?

a. Does the State have the power to commit responsible persons who are a danger to society to mental institutions?

"Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." Bates v. Little Rock, 361 U.S. 516, 524, 80 S.Ct. 412, 417 4 L.Ed.2d 480 (1960); Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

The most fundamental "personal liberty" is the right to be independent from State control in one's person and thoughts. Mental commitment deprives the individual of this fundamental liberty. Therefore, the State must have a compelling interest to justify mental commitment. The commitment statutes must be rationally related to and necessitated by such compelling statutory interest. McLaughlin v. Florida, 379 U.S. 184, 196, 85 S.Ct. 283, 290, 13 L.Ed.2d 222 (1964).

(i) The State has no "compelling interest" to commit a responsible person to a mental institution, even if that person is dangerous to society. One of the purposes of commitment statutes is to protect society. Society is adequately protected from the dangerous acts of responsible persons by the threat of or actual incarceration for the commission of those acts. A responsible person has the ability to decide whether or not to commit an act against society, and can appreciate such consequences of his acts. Therefore, to incarcerate such a responsible person in anticipation of his actions is an unjustifiable deprivation of his liberties.

(ii) Even if we assume the State has a compelling interest in committing responsible persons who are dangerous to society, it is not "necessary" that they be committed to a mental institution when they are already incarcerated in a penal institution. This Court has held that where a state acts to infringe on "fundamental liberties", such action must be "necessary" to effectuate the state's interest. See McLaughlin v. Florida, supra. It was not "necessary" for the State of Minnesota to continue the mental commitment of Petitioner when he is already incarcerated in a penal institution. While so incarcerated, he is no longer a danger to society. Further, he is receiving treatment in that institution.

If Petitioner is discharged from his commitment, society will be adequately protected. If Petitioner is a danger to

society at the time of his discharge from the penal institution, the State can then commit him to a mental institution. The present discharge from commitment may motivate the Petitioner to make an adequate adjustment in society.

b. Does the State have the power to commit responsible persons who are a danger to society to mental institutions when such institutions do not offer a treatment program that will benefit the committed person?

There are a significant number of cases which hold that our Constitution guarantees all persons committed to mental institutions the right to treatment. Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966); Wyatt v. Stickney, 325 F.Supp. 781 (D.Ala. 1971); Covington v. Harris, 419 F.2d 619 (D.C. Cir. 1969); Welsch v. Likins, 373 F.Supp. 487 (D.C. Minn. 1974).

The rationale of these cases is when the State commits a person for reasons other than the commission of a particular criminal act, treatment is the only constitutionally permissive purpose of their confinement, regardless of procedural protections under the governing civil commitment statute. See Wyatt v. Stickney, 325 F.Supp. 781, 784.

This argument rests upon the Eighth and Fourteenth Amendments, relying principally upon the Supreme Court's decision in Robinson v. California, 370 U.S. 660 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). Robinson held that the cruel and unusual punishment clause prohibits conviction for a criminal offense, and concomitant

criminal incarceration solely for the "status" of being a narcotics addict. 370 U.S. at 665 through 667, 82 S.Ct. 1417.

Although the Court in Robinson focused upon the "status" as a criminal offense, 370 U.S. 660, 676, 82 S.Ct. 1417, its doctrine applies to various kinds of non-criminal incarceration based upon mere "status". See Rouse v. Cameron, supra. The Petitioner in the instant action is not being committed for any overt criminal act. He is a victim of uncontrollable "status", that is, a responsible person who is a danger to society.

If he is subject to detention for this status without a curative program, Petitioner will be within the ambit of the Robinson proscription. While Robinson turned on the Eighth Amendment, in the context of civil commitment, in the instant case it is the due process clause that would compel that minimally-adequate treatment be afforded the Petitioner. See Welsch v. Likins, supra, at page 496; Rouse v. Cameron and Wyatt v. Stickney, supra.

Statements of the Supreme Court in Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972), support this principle. There, the Supreme Court said that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed". 406 U.S. 715, 738, 92 S.Ct. 1845, 1858. A corollary is the principle of the least restrictive alternative (see Covington v. Harris, supra) which would prohibit a commitment when other means of treatment are available.

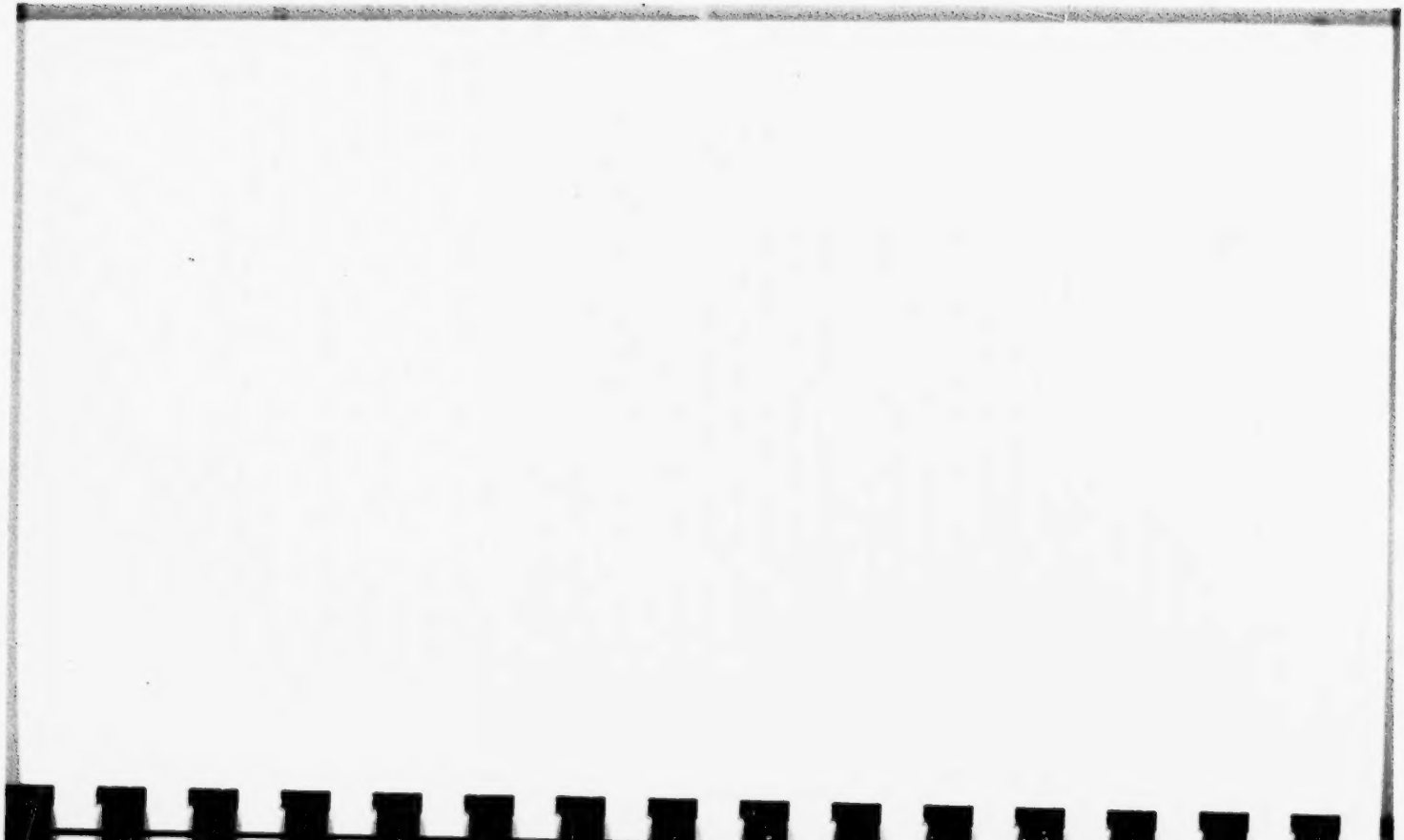
All these cited cases involved attempts to improve facilities in mental institutions. The Petitioner contends that commitment of him is itself unjusitifed without the State providing adequate treatment. The facts of this case show that Petitioner is a responsible person who has been committed by the State because he is a danger to society. The institutions to which he is committed have no programs which offer treatment to him. The indefinite commitment of Petitioner to mental institutions is the antithesis of treatment for him. Therefore, if the only justification for the State's commitment of Petitioner is to provide treatment for him, then he should be discharged from commitment.

Petitioner was being adequately and appropriately treated in a Minnesota correctional institution. Therefore, under the doctrine of the least restrictive alternative, his mental commitment should have been discharged.

2. The decision below raises significant questions with regard to the procedural safeguards of State mental commitment proceedings.

Petitioner contends that the proof standard which should have been utilized in his petition for discharge from mental commitment was that of "proof beyond a reasonable doubt" and not as held by the Minnesota Supreme Court of "by a fair preponderance of the evidence".

Apart from the area of involuntary mental commitments, a comparable massive invation by the State of the right of the



individual to life and liberty occurs only in the context of criminal or juvenile court proceedings. However, both in the criminal area and more recently in the area of juvenile courts, since In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967), strict procedural safeguards have been mandated to assure to the individual a degree of freedom from the arbitrary or illfounded invasion of his constitutional rights.

As emphasized in In re Gault, the labels of "civil" and "criminal" do not determine the limits of the breach of due process when substantial deprivations of liberty are involved.

Extending its decision in Gault, the Supreme Court in In re Winship, 397 U.S. 358, 90 S.Ct. 1058, 25 L.Ed.2d 368 (1970), held that proof beyond a reasonable doubt was required to prove every fact necessary in juvenile delinquency proceedings, noting that "extreme caution in factfinding" is necessary "because of the possibility that (the individual) may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction". (397 U.S. at 363, 90 S.Ct. 2572).

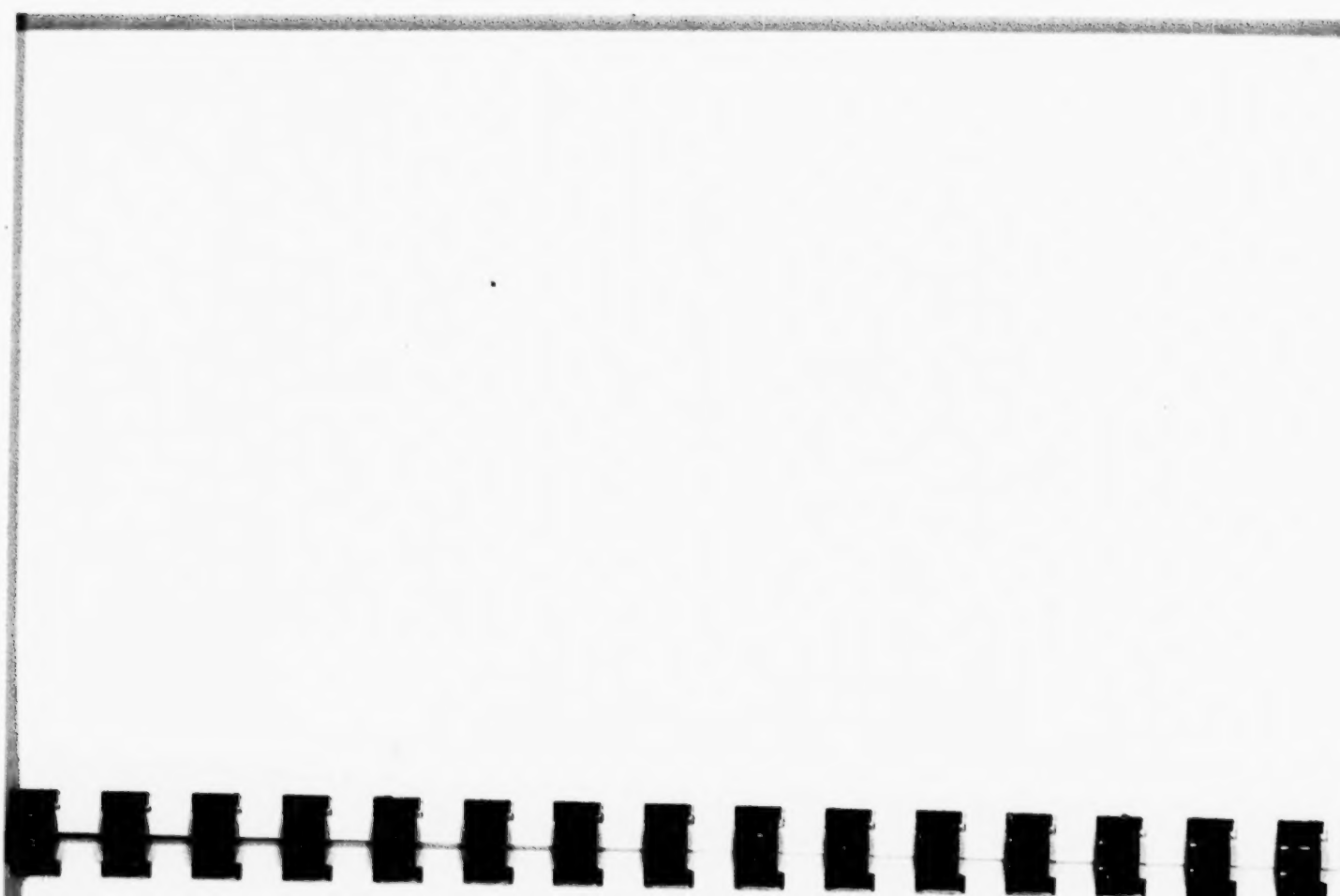
In contract to the criminal proceedings where definite legislative determinations mark the limits of sentencing discretion, a committing court is empowered under Minnesota Commitment Act to order incarceration for an individual "for an indeterminate period".

The possible deprivation of liberty in civil commitment is at least as great as in criminal and juvenile proceedings where the standard of proof is "beyond a reasonable doubt". Petitioner argues that the Constitution requires the same strict standard of proof be applied in mental commitment proceedings.

Even with regard to deportation proceedings where the possible deprivation of liberty is not nearly as great as in a mental commitment, the Supreme Court held in Woodby v. Immigration & Naturalization Service, 385 U.S. 276, 87 S.Ct. 483, 17 L.Ed.2d 362 (1966) that it is impermissible for an individual to be "banned from this Country upon no higher degree of proof than applies in a negligence case". (385 U.S. at 285, 87 S.Ct. at 487).

The case of Lessard v. Schmidt, 349 F. Supp. 1078 (D.Wis. 1972), held that the necessity for a stringent standard of proof in civil commitment proceedings exceeds the reason which prompted the Supreme Court to require proof beyond a reasonable doubt in juvenile proceedings:

> "The argument for a stringent standard of proof is more compelling in a case of a civil commitment in which an individual will be deprived of basic civil rights and be certainly stigmatized by the lack of confidentiality of adjudication. We therefore hold that the State must prove beyond a reasonable doubt all facts necessary to show that an individual is mentally ill and dangerous". 349 F. Supp. at 1095.



The Minnesota Supreme Court concedes that proof beyond a reasonable doubt is the standard to be applied in an initial commitment; however, the Court refused to extend the standard to Petitioner for discharge from commitment. It is difficult to see how one's deprivation of liberty is any less severe upon his failure to obtain a discharge from commitment than it was upon his initial commitment.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Minnesota.

Respectfully submitted,

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January 27, 1975

Probate Court Appeal Panel
No. 149
Scott, J.

In re Petition for Rehearing and Reconsideration of Acting Commissioner's Order Discharging Anthony Lausche, Mentally Ill and Dangerous.

Anthony Lausche,

Appellant,

vs. 44591

Commissioner of Public Welfare,

Respondent,

County of Otter Tail,

Respondent.

Endorsed
Filed November 1, 1974
John McCarthy, Clerk
Minnesota Supreme Court

S Y L L A B U S

1. Where expert testimony lends itself to the conclusion that the appellant "may act impulsively without justifiable provocation to commit an assault upon others and is a serious danger or threat to society unless controlled or supervised," the common meanings of the words of the statutes requiring a finding of "mentally ill and dangerous" are satisfied.

2. Treatment for mental illness comes in many forms, not always clearly medical in the common meaning of that word. Various programs and even supervision itself are property regarded as treatment.

3. The standard to be applied in this case involving a petition for release and an appeal therefrom is the civil standard of a fair preponderance of the evidence.

4. There is nothing inconsistent regarding a commitment to both the commissioner of public welfare and the Commissioner of corrections, if both are in accordance with due process. One commitment does not disturb the other.

Affirmed.

Heard before Sheran, C.J., and Kelly, Todd, Yetka, and Scott, JJ., and considered and decided by the court en banc.

OPINION

SCOTT, Justice.

This is an appeal from the order of an appeal panel dated July 3, 1973, pursuant to Minn. St. 253A.15, wherein it was ordered that the appellant, Anthony Lausche, upon release from Stillwater State Prison be returned to the Minnesota Security Hospital at St. Peter, Minnesota, and there be held under the jurisdiction of the medical director until the appellant could be released with reasonable safety under a program of supervision. We affirm.

Appellant Anthony Lausche has been in various mental and correctional institutions over a period of approximately 12 years. His present commitment commenced in 1969 when he was committed to the commissioner of public welfare as mentally ill

and dangerous and was subsequently transferred from the Minnesota Security Hospital to an open setting at Brainerd State Hospital. While in this open setting at Brainerd he assaulted a girl in a tavern, and subsequently pled guilty to a charge of aggravated assault. This resulted in his incarceration at the State Prison at Stillwater. During the incarceration a petition for his release from the commitment to the commissioner of public welfare was brought before the special review board pursuant to Minn. St. 253A.15, subd. 2(a). Following a hearing, the board recommended that appellant be discharged from his commitment as mentally ill and dangerous. The acting commissioner adopted this recommendation as his order. The county attorney of Otter Tail County then filed a petition for rehearing and reconsideration of the commissioner's order pursuant to § 253A.15, subd. 2(c). After the hearing, the panel of three probate judges reversed the commissioner's order and continued the commitment, ordering appellant to be returned to the state security hospital when his Stillwater term had been completed. This appeal was taken from that order. Minn. St. 253A.15, subd. 2(f). Since the appeal was taken, the appellant has been transferred in accordance with that order to the Minnesota Security Hospital, where he is now committed.

Three issues can be gleaned from the appellant's brief: (1) Is there evidence to support the appeal panel's determination that the appellant is mentally ill and dangerous under Minn. St. 1971, § 253A.02, subd. 3, and Minn. St. 253A.02, subd. 17? (2) What is the standard of proof and upon which party is the burden that appellant should or should not be discharged

from commitment? (3) Is the order returning the appellant to Stillwater State Prison in effect a discharge from commitment?

(1) The pertinent parts of the applicable statutes are Minn. St. 1971, § 253.02, subd. 3, which provides:

> "'Mentally ill person' means any person having a psychiatric or other disorder which substantially impairs his mental health and who is in need of treatment or supervision." (Italics supplied.)

and Minn. St. 253A.02, subd. 17, which provides:

> "'A person dangerous to the public' means a person who is mentally ill or mentally deficient and whose conduct might reasonably be expected to produce a clear and present danger of injury to others."

The appeal panel, pursuant to § 253A.15, subd. 2(c), stated as follows:

> "This tribunal finds that the patient is suffering from a mental defect psychiatrically labelled a sociopath or a character disorder. That this defect is of such a nature and intensity that he cannot control his impulse to do violence and injury to other persons or property when subjected to stressful situations requiring the exercise of emotional restraint or control. Thus, on any occasion he may act impulsively without justifiable provocation to commit an assault upon others and is a serious danger or threat to society unless controlled or supervised."

The appellant focuses upon the phrase of the above statute "who is in need of treatment or supervision" to conclude that a finding that one is mentally ill can only lead to a commitment in a mental institution for treatment. In response, the commissioner of public welfare indicates that the key to this section is satisfied by the past and present treatment afforded Mr. Lausche. He has been placed in open hospitals and in programs of rehabilitation, and he has been discharged into the community. This last-named attempt was met by appellant's commission of an aggravated assault upon a woman, for which he was incarcerated. Further attempts are still being made toward his rehabilitation into society.

Therefore, treatment for mental illness comes in many forms, not always clearly medical in the common meaning of that word. Various programs and even supervision itself are properly regarded as treatment. Minn. St. 253A.17, subd. 9. With convincing evidence of mental illness upon the record, as well as the appellant's aggravated background through many years and incidents, the appeal panel was presented with ample evidence to find the appellant mentally ill and dangerous by applying the common meanings of the words of the statutes involved, with their application to all opinions, medical and otherwise, and the other evidence before it.

We would like to strongly emphasize to all those involved in the mental commitment procedure that the ward's actual release should not be predicated upon a prevailing opinion that treatment will not help, that hospitalization would be in vain, and that therefore the ward should be released. If

the patient is judged mentally ill and dangerous, the rights of the public must be considered. Those who are a danger to the public are released at times because technically there are no medical procedures that can change their possible character disorders or other symptoms. The determining question should be: If not institutionalized, will they be a danger to society? Then, every attempt should be made either to rehabilitate in a correctional institution or to apply modern therapy, medical or otherwise, in a medical or quasi-medical institution. At the present time there is no third alternative to our penal or medical institutions for the handling of some of these unfortunate and dangerous members of society.

In the instant case, the facts as presented, evidence the multiple and varied programs available to rehabilitate the appellant. Possibly determinative is the fact that competent experts testified that if the appellant were released before the completion of his rehabilitation he might react in a dangerous manner. Therefore, a granting of the discharge at this time would create the situation of no control over a perhaps premature release. There is, therefore, ample evidence to support the findings of the appeal panel.

2. The appellant relies heavily upon the case of Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972), to support his contention that proof beyond a reasonable doubt that the appellant is mentally ill within the meaning of the statute is required before his commitment can be continued. Although this is a necessary standard to be employed with regard to the ini-

tial commitment of the alleged mentally ill person, we cannot extend it to supplementary proceedings, including petitions for discharge. Rather, we must reaffirm our holding in the case of In re Restoration to Capacity of Masters, 216 Minn. 553, 13 N.W. 2d 487 (1944), where this court was faced with an appeal from a denial of a petition for restoration to capacity. The court reversed this denial, stating:

> "The record here, however, affirmatively discloses that in arriving at its findings and conclusions the trial court placed too great a burden of proof upon the petitioners. *** That she should assume the burden of proof to establish her restoration to capacity is perfectly proper, for the law rightfully presumes that a condition of feeble-mindedness or insanity once shown to exist will thereafter continue. We recoganize that in committing the less fortunate members of society to our public institutions the courts are not penalizing them; yet a proper respect for our fundamental American concepts of liberty and freedom impels us to hold that these unfortunates have met the full measure of proof entitling them to a decree of restoration to capacity when they prove their present mental capacity by a fair preponderance of the evidence." 216 Minn. 562, 13 N. W. 2d 492.

The standard we are therefore applying in factual settings such as the one before us is the civil standard of a fair preponderance of the evidence. To apply the higher standard to these proceedings would establish a procedure in which every patient

committed as mentally ill and dangerous would require a recommitment every few months at his insistence. This was not the legislative intent as expressed in the Minnesota Hospitalization and Commitment Act, Minn. St. 1971, Ch. 253A. Nor does the appellant obtain such a right through constitutional guarantees of due process.

Inasmuch as the petition for rehearing and reconsideration was instituted by the county attorney following a discharge of the appellant's commitment by the special review board, the burden of this standard should be upon the petitioner to establish by a fair preponderance of the evidence that the condition of the party is still that which warrants further commitment as mentally ill and dangerous. That burden has been satisfied and there is ample evidence to warrant an affirmance of this continued commitment.

(3) In this case the appellant is under commitment to both the commissioner of public welfare and the commissioner of corrections. The commissioner of public welfare has the express statutory authority to transfer patients to a "suitable" institution without disturbing commitment. Minn. St. 246.14. The appellant, on the other hand, cites § 253.21 to support his contention that the commitment must be discharged. However, that statute, as interpreted, was designed to reach situations where an inmate of a prison subsequently develops a mental illness, not that set of facts presented here. See, Op. Atty. Gen., 328-A, Oct. 26, 1935; State ex rel. Guren v. Grimes, 245 Minn. 241, 71 N.W. 2d 885 (1955). Since both proceedings are in accordance with due process of law, one commitment does

not disturb the other.

Finding no further genuine issues, we affirm the appeal panel.

Affirmed.

STATE OF MINNESOTA IN PROBATE COURT

COUNTY OF RAMSEY APPEAL PANEL

In the Matter of the Petition for Rehearing and Reconsideration of Acting Commissioner's Order Discharging ANTHONY LAUSCHE, Mentally Ill and Dangerous) ORDER

The above entitled matter came duly on for hearing on October 18, 1972, at ten o'clock a.m., after continuance duly had, before the undersigned three judge panel at Room A, Fourth Floor, Centennial Building, 658 Cedar Street, St. Paul, Minnesota. That said matter was brought on for hearing on a petition made by Harlan L. Nelson, County Attorney, Otter Tail County, Minnesota, pursuant to the provisions of Minnesota Statutes Section 235A.15, requesting a rehearing and reconsideration of the Order granting discharge of said patient made by the Acting Commissioner of Public Welfare, Ove Wangensteen, dated July 3, 1972, discharging him from commitment as mentally ill and dangerous. That the Supreme Court of the State of Minnesota by its Order made by the Chief Justice, Oscar Knutson, dated May 15, 1972, appointed an appeal panel to review said matter, and appointed the undersigned judges to serve on such panel. That pursuant to the foregoing, an Order for Hearing was issued on August 4, 1973, made by Melvin J. Peterson, Judge of Probate Court of Hennepin County, Minnesota, acting in his capacity as Chief Judge of said panel, pursuant to the Order of Justice Knutson.

Harlan L. Nelson, Esq., County Attorney, Otter Tail County, Minnesota, appeared on behalf of the County of Otter Tail, Minnesota; Benjamin J. Smith, Esq., appeared on behalf of said Anthony Lausche; and Tibor M. Gallo, Esq., appeared on behalf of the Commissioner of Public Welfare.

The undersigned judges having duly considered the evidence adduced at said hearing, and upon all the files, records and proceedings herein, now makes the following FINDINGS and ORDER:

1. That said ward is still mentally ill and dangerous within the statutory meaning of Section 253A.02 Subd. 17 as of the date of hearing. That some improvement in his condition is indicated, but a great reliance on such indication cannot be placed in view of the ward's long history of misbehavior and violent tendencies following periods of remorse, improvement and promise. That the mental condition existing at the time of the original commitment still persists. That said commitment was made on December 19, 1969, and yet while still under commitment the ward repeated his violent conduct in February, 1972, resulting in a sentence to Stillwater which he is now serving. That the ward entered a plea of guilty to the charge for which sentenced, and no disposition was made by full trial and determination by a jury or trier of fact as to the patient's sanity or lack thereof at the time of the act of violence. Therefore, little if any weight can be given to a determination of guilty which was made in such uncontested

criminal proceedings, as his state of mind was not put in issue in any adversary manner.

This tribunal finds that the patient is suffering from a mental defect psychiatrically labeled a sociopath or a character disorder. That this defect is of such a nature and intensity that he cannot control his impulse to do violence and injury to other persons or property when subjected to stressful situations requiring the exercise of emotional restraint or control. Thus, on any occasion he may act impulsively without justifiable provocation to commit an assault upon others and is a serious danger or threat to society unless controlled or supervised.

That during the time that the ward has been serving a sentence at Stillwater State Prison, certain programs of treatment have been initiated with some apparent success, but with unpredictable consequences as to long-range rehabilitation. That the major deficiency in the patient's character is frustration tolerance which must be engendered in some way if the patient is to be safely released into society on his own. Every day every member of society must experience a certain amount of frustration in varying degrees, and all must exercise control or be in serious trouble. This the ward must learn. Alcohol appears to lower his tolerance and its consumption by him is not desirable. Underlying sex problems exist, expressed in part by his attitude towards women. The present programs would seem to be beneficial to the ward, but the Court feels that the ward must be under some

long-range supervisory arrangement or sustained confinement would appear proper. Accordingly, this tribunal has not seen fit to make an immediate release until further experience has been indicated in confinement. At this time, it would appear that with appropriate response on the part of the ward, he could be placed in a controlled environmental setting. Whether this can be done by Corrections or by mental institutional care is not material. At the present time, this is available to some degree through Corrections, and should be kept available, despite the fact that the patient has an underlying mental problem. Competition between correctional programs and mental health programs should not exist, and the same program should be available through either method to prevent institutional shopping by lawyers and other persons having duties to perform in this area. Uniformity of programs must be available for persons having like problems, and cooperation between our institutions is absolutely necessary to attain public confidence and to achieve desired goals of rehabilitation, to the end that persons with mental problems can be returned with a degree of safety to the community. Accordingly, the panel is of the opinion that it cannot affirm the findings and order of the Review Board, which must be modified to provide a continuation of the Order of Commitment as mentally ill and dangerous. It appears that the conviction for assault entered on a plea of guilty had too much influence on the Review Board, and is in no way an adjudication of the ward's actual state of mind. The fact that such patients are difficult to deal with cannot change the legislative direction to

confine such persons for treatment, though the treatment be difficult and improvement hard to discern. Studies show that confinement in itself does have some effect on sociopaths, and with the assistance of some treatment form, it tends to slowly bring about a change of attitude, as age and maturity are gradually achieved, although in some instances, this may never occur. Such change we must seek to achieve with reasonable safeguards to the public.

There is need for further programming in this case with more emphasis on rehabilitation and vocational training. The panel is of the opinion that the State should place more emphasis on these points. Better vocational training is needed in our state institutions, and the Commissioner has a duty to provide such training to carry out the legislative purpose of treatment wherever possible.

NOW, THEREFORE, IT IS ORDERED:

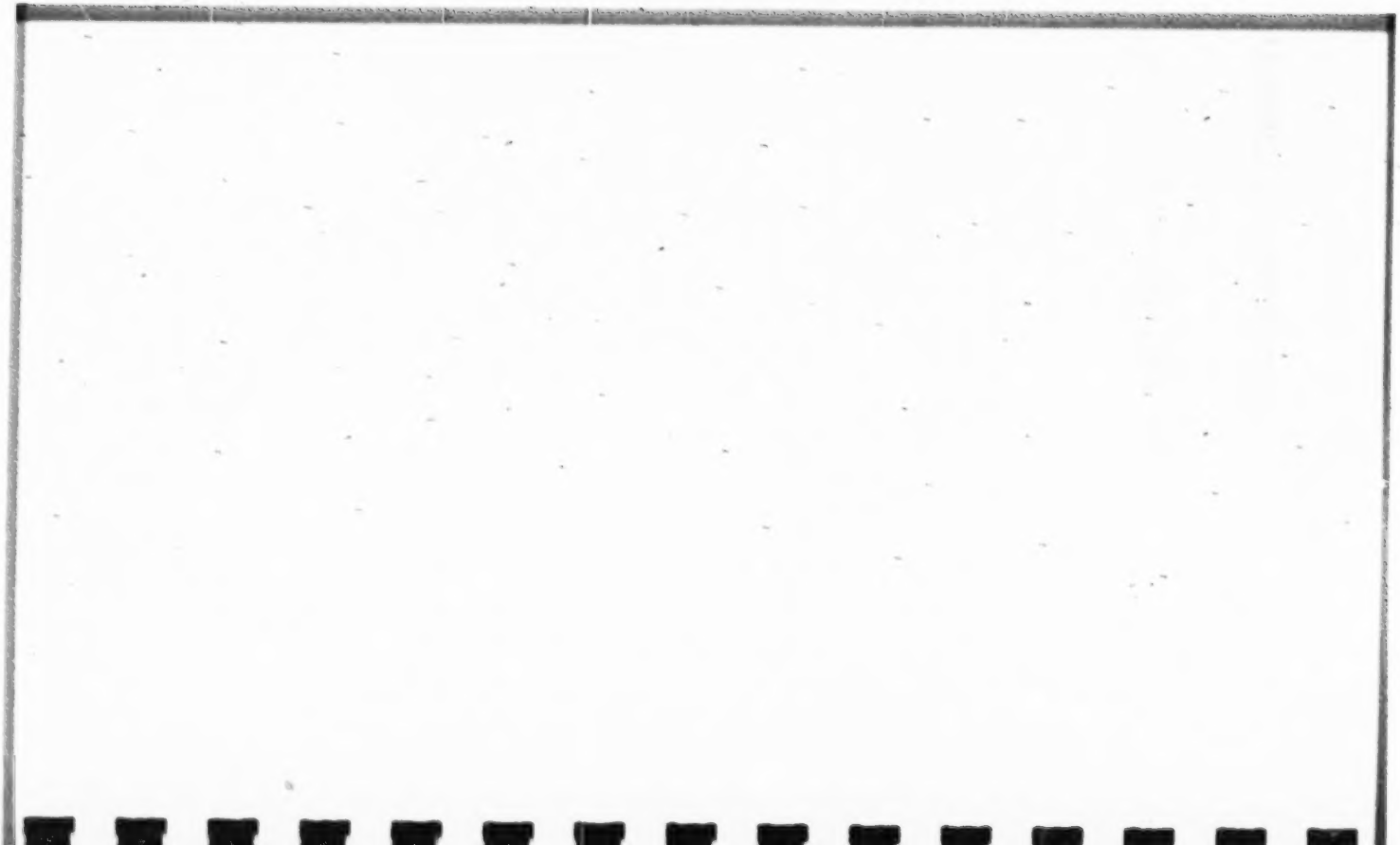
That the Order of the Review Board dated July 3, 1972, is hereby reversed and the following Order substituted in its place and stead, namely: That the ward upon release from the Stillwater State Prison must be returned to the Security State Hospital at St. Peter, Minnesota, and there to be held under the jurisdiction of the Medical Director until the ward can be released with reasonable safety under a program of supervision.

Dated this 3rd day of July, 1973.

/s/ Melvin J. Peterson

/s/ Robert V. Campbell

/s/ John Lang



STATE OF MINNESOTA
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55101

Petitioner Anthony Lausche a patient at the Minnesota State Prison appeared before the Special Review Board pursuant to MSA 253A. 15, subd. 15 as amended by Laws 1971, Chapter 262 on June 28, 1972. The original hearing which was held on April 5, 1972 was continued and brought to the attention of the Review Board again, for further action. Board members were:

Mr. William Kampf, Chairman
Mr. Robert Spano

Also present at the hearing were:

James Duffey, Correctional Officer
Dr. Charles Sheppard
Mr. Dwight Dixon
Mrs. Marlis Funke

Evidence was presented and said Special Review Board hereby makes the following findings of fact:

1. That the findings alleged in the petition are true.

2. That Mr. Lausche is on a continual cycle of going in and out of institutions.

3. That in accordance with the findings of all of the staff of the institutions that have dealt with him, he is thoroughly insti-

tutionalized, whether it be a correctional or mental health institution and that something needs to be done to break this dependency cycle on institutions.

4. That unless some change in status is made, this cycle will continue for the balance of his life.

5. That during the period he will reside in a correctional institution, namely Stillwater State Prison, an open ended situation at the conclusion of his sentence may lead him to seek some therapy with regard to getting back into society.

6. It is recommended, therefore, that the prison staff make all efforts to rehabilitate this man toward his being capable of living in society and of being a working member of society.

7. We further recommend complete discharge at this time, from his commitment as mentally ill and dangerous in view of all the circumstances as mentioned before.

ORDER

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, that:

1) Anthony Lausche be granted a complete discharge from his commitment as mentally ill and dangerous.

July 3, 1972
Dated

/s/ Ove Wangensteen
Ove Wangensteen, Acting Commissioner

SUPREME COURT, U. S.
MAR 3

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-938

ANTHONY LAUSCHE,

Petitioner,

vs.

COMMISSIONER OF PUBLIC WELFARE

and

COUNTY OF OTTER TAIL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF OF THE RESPONDENT COMMISSIONER OF PUBLIC WELFARE IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF OF THE RESPONDENT COMMISSIONER OF PUBLIC WELFARE IN OPPOSITION

JURISDICTION

This Court does not have jurisdiction under 28 U.S.C. § 1257(3) because the petitioner failed to raise the alleged federal questions in the proceedings below. *See*, U.S. Sup. Ct. Rule 19, 28 U.S.C. 1257(3) and *Cardinale v. Louisiana*, 394 U.S. 437, 89 S.Ct. 1162, 22 L.Ed. 2d, 398 (1969).

STATUTORY PROVISIONS INVOLVED

The proceedings below were based entirely on Minn. Stat. § 253A.15 subd. 2 (1974) (Minnesota Statutes, Vol. 2, p. 3096), which sets forth the procedure for a person committed as mentally ill and dangerous to petition for release before a special review board, to appeal for a hearing *de novo* before a panel of three probate judges, and to appeal to the state supreme court.

Minn. Stat. § 253A.16 subd. 5 (1974) (Minnesota Statutes, Vol. 2, p. 3099) states the necessary composition of the special review board.

Minn. Stat. § 253A.07 (1974) (Minnesota Statutes, Vol. 2, p. 3090) sets forth the procedures and standards for civil commitment in the State of Minnesota. Although these provisions were *not* involved in the proceedings below, the petitioner is now suggesting that they have somehow presented a federal question for review by this Court.

Minn. Stat. § 253A.21 subd. 3 and 5 (1974) (Minnesota Statutes, Vol. 2, p. 3103) contains the proper procedure by which the petitioner could have obtained judicial review of his initial commitment. Because of the length of the foregoing statutes, they are fully set forth in the appendix (R.A.1).

STATEMENT OF THE CASE

The petitioner, Anthony Lausche, was committed as mentally ill and dangerous on December 19, 1969, by a probate court of competent jurisdiction. That commitment was never challenged by appeal or habeas corpus proceedings.

This proceeding began before a special review board convened pursuant to Minn. Stat. § 253A.15 subd. 2 (1974), in April 1972, to determine whether the petitioner should be discharged from his existing commitment of mentally ill and dangerous. An intervening prison sentence caused the special review board to reconsider petitioner's case on June 28, 1972. That hearing resulted in the administrative order of July 3, 1972, discharging petitioner's commitment (Petition, A. 16, 17). The Otter Tail County Attorney thereupon appealed for a rehearing and reconsideration before a three probate judge appeal panel, pursuant to Minn. Stat. § 253A.15 subd. 2(b), (c), and (d) (1974).

On October 18, 1972, the duly convened appeal panel heard the matter *de novo* (R. 5, 75). The appeal panel found that the petitioner was still mentally ill and dangerous and ordered that his commitment not be discharged in its order of July 3, 1973 (Petition, A.10).

The petitioner then appealed to the state supreme court pursuant to Minn. Stat. § 253A.15 subd. 2(f) (1974). The supreme court affirmed the appeal panel's order on November 1, 1974 (Petition, A.1).

It bears restating that at no point in the aforesaid proceedings was there any challenge to the petitioner's original 1969 commitment, nor could there have been under the controlling statutes.

ARGUMENT

I. NONE OF THE QUESTIONS RAISED BY THE PETITIONER WERE DECIDED AT ANY STAGE OF THE PROCEEDINGS BELOW.

Constitutional standards for civil commitment and for minimally adequate treatment of mentally ill persons are no longer novel issues in federal or state courts. It is possible that persons situated as the petitioner herein may raise substantial federal questions in the proper proceedings under the appropriate circumstances. However, neither the record nor the proceedings in this case give rise to the alleged federal questions in the petition. First, the permissible constitutional questions were not appropriately raised below, and second, all constitutional questions concerning the initial commitment were simply beyond the scope of the challenged proceedings. This Court will not entertain a review of lower court proceedings on issues not decided, *Cardinale v. Louisiana*, 394 U.S. 437, 89 S.Ct. 1162, 22 L.Ed. 2d 398 (1969); *Tacon v. Arizona*, 410 U.S. 351, 93 S.Ct. 998, 35 L.Ed. 2d 346 (1973).

A. The constitutional questions were not timely raised.

U.S. Sup. Ct. Rule 23 requires that a petition for a writ of certiorari to a state court specify the stage in the proceedings and the manner in which the federal questions were raised, and the disposition of those questions below. The petitioner has not complied in any respect with that rule.

Moreover, petitioner's failure to specify federal questions in the proceedings below merely reflects the fact that those questions were never presented to either the special review

board or the probate judge appeal panel. Indeed, that entire portion of the record, including a legal memorandum submitted on the petitioner's behalf, is absolutely devoid of any constitutional claims.

The petitioner first raised constitutional questions on appeal to the state supreme court. The court obviously did not consider the issues properly presented, although its reasoning therefore is not entirely clear. The court stated:

> Three issues can be gleaned from the appellant's brief: (1) Is there evidence to support the appeal panel's determination that the appellant is mentally ill and dangerous under Minn. St. 1971, § 253A.02, subd. 3, and Minn. St. § 253A.02, subd. 17? (2) What is the standard of proof and upon which party is the burden that appellant should or should not be discharged from commitment? (3) Is the order returning the appellant to Stillwater State Prison in effect a discharge from commitment?

(Petition, A.3, 4). Thus, it is evident from the court's characterization of the issues and from the entire opinion that it neither considered nor ruled upon constitutional issues which could conceivably have emanated from the prior proceedings.[1]

Since those issues were not considered in the state court proceedings, they cannot be considered before this Court, *Cardinale v. Louisiana, supra.*

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[1] Although the court cited *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972), it recognized that the case considered a person's constitutional rights during the initial commitment proceeding and distinguished it on the grounds that the petitioner's initial commitment was not on appeal. Also, note: judgment vacated and case remanded, *Schmidt v. Lessard*, 414 U.S. 473, 94 S.Ct. 713, 38 L.Ed. 2d 661 (1974).

B. A challenge to commitment powers and standards could not have been raised below.

The petition before this Court dwells almost exclusively upon the alleged constitutional infirmities of the Minnesota commitment procedures. Yet these have at no time been in issue. The proceedings below concerned the *discharge* of a commitment, not a commitment itself. The petitioner has had and continues to have ample opportunity to properly challenge the commitment standards if he so chooses. Minn. Stat. § 253A.21 subd. 5 (1974)[2] permits an appeal from any commitment order, and Minn. Stat. § 253A.21 subd. 3 (1974) preserves the right to seek relief by writ of habeas corpus from any commitment order. The petitioner, however, has not availed himself of these opportunities.

The proceedings below have all occurred pursuant to Minn. Stat. § 253A.15 subd. 2 (1974). The only orders affecting a patient's status that can be made under that section by either the special review board or the probate judge appeal panel are: continuation of the commitment, provisional discharge, or discharge. Any appeal to the state supreme court is necessarily confined to those issues because the court is limited to review on the record.

It is clear that the state supreme court could not have ruled on the constitutionality or any other aspect of commitment. Likewise, this Court cannot review decisions not made below. To be sure, the state court discussed by way of dictum commitment and even the standard of proof to be employed, but

---

[2] In Minnesota, the district courts have general jurisdiction and their judgments and orders may be appealed to the state supreme court. Although § 253A.21 subd. 5 has been amended since the petitioner's commitment, the appeal rights have remained substantially the same.

this was not a holding because the appeal was not from a commitment. Thus, the petitioner is precluded from presenting questions concerning the standards and procedures for commitment before this Court.

II. THE RECORD IS INADEQUATE TO DECIDE IMPORTANT CONSTITUTIONAL ISSUES.

The petitioner's argument 1.a. (Petition, 6), in which he urges that there is no compelling state interest for his commitment or continued confinement, is raised for the first time in his petition. The argument was not made at any previous stage of the proceeding, nor were any of the supporting cases previously cited.

The petitioner's argument 1.b. (Petition, 8) was at least introduced in his brief to the state supreme court. He asserts the theory that a committed mentally ill person has a constitutional right to treatment. While that may become one of the most significant issues before this Court during the decade, it should not be decided on a record as woefully inadequate as this one.

There is no evidence in the record that the petitioner was not receiving as much care and treatment as he possibly could in any alternative institution. To the contrary, the record generally shows that many efforts have been made to treat him and to ultimately release him as a productive member of society. But because the issue was not before the appeal panel, no effort was made by any party to thoroughly examine the quality of treatment being rendered. Even the state supreme court could only comment that many treatment methods have been tried (Petition, A.5). The poor record and lack of substantial consideration by the court below are both sufficient

grounds for this Court to deny the petition. *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969).

III. THE STATE SUPREME COURT CORRECTLY DECIDED THE STANDARD OF PROOF FOR DISCHARGE.

The petitioner argues that on the petition for discharge, the standard of proof ought to be proof beyond a reasonable doubt and not proof by a fair preponderance of the evidence. As noted earlier, his entire argument seems to discuss initial commitment, as do his supporting cases (Petition, 10-13), which issue was not considered below. Assuming, *arguendo*, that the argument applies to the petition for discharge, then the state supreme court properly decided the issue.

The petitioner apparently is arguing that a state must prove beyond a reasonable doubt that a patient's confinement must be continued each time a patient appears before the special review board. The consequence of this position approaches the absurd. Since a patient may petition the special review board for a hearing at will, the petitioner would in essence require the state to recommit a mentally ill and dangerous person as often as the board met. The court below understood the implications of the petitioner's argument and made the correct decision (Petition, A.7, 8).

CONCLUSION

For the reasons set forth in this brief, the respondent, commissioner of public welfare, prays that this petition for a writ of certiorari be denied.

Dated: February 27, 1975.

Respectfully submitted,

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APPENDIX

Minnesota Statutes (1974):

§ 253A.15 DISCHARGE.

* * *

Subd. 2 (a) Where such patient was found by the committing court to be dangerous to the public or to have a psychopathic personality, such patient shall not be discharged or provisionally discharged except upon order of the commissioner and no such discharge or provisional discharge shall be ordered by the commissioner unless he is satisfied that the patient is capable of making an acceptable adjustment in society and unless the commissioner has received a favorable recommendation to that effect by a majority of the special review board appointed and acting under section 253A.16. A petition for an order of discharge or provisional discharge shall be filed with the commissioner and may be filed by the patient or by the head of the hospital. The special review board shall be convened by the commissioner at reasonable intervals and shall hold a hearing on each petition for discharge or provisional discharge prior to making any recommendation thereon. The probate court and the county attorney of the county of commitment, and the petitioner and his attorney, if any, shall each be given written notice by the commissioner of the time and place of the hearing before the special review board at least 14 days prior to the date of such hearing and may appear before the special review board and such persons shall also be given written notice of the making of any such order by the commissioner and a copy of the same within five days after the making and entry of such order, the notice and copy

thereof to be furnished by registered mail with return receipt. No order by the commissioner for the discharge or provisional discharge of a patient shall be made effective sooner than 30 days after the making and entry of such order.

(b) There shall be established by the supreme court an appeal panel composed of three probate judges and two alternate probate judges, all of whom shall be appointed from among the acting probate judges of the state by the chief justice of the supreme court for terms of one year each. Only three judges need hear any case. One of the regular three judges so appointed shall be designated as the chief judge of the appeal panel and that judge is hereby vested with power and authority to fix the time and place of all hearings before the panel, issue all notices, subpoena witnesses, appoint counsel for the patient, if necessary, and generally to supervise and direct the operation of the appeal panel. The chief judge shall designate any other judge or any alternate judge to act as chief judge in any case where such chief judge is unable to act and with the same powers and authority. No judge appointed to the appeal panel shall take part in the consideration of any case in which that judge committed the patient in the probate court. The chief justice of the supreme court shall determine the compensation of the judges serving on the appeal panel, such compensation to be in addition to their ordinary compensation as probate judges, and all compensation and expenses of the appeal panel shall be borne by the department of public welfare.

(c) The patient or the county attorney of the county from which the patient was committed aggrieved by the action of the commissioner under clause (a), may petition for a rehearing and reconsideration of the case before the appeal panel. Such petition shall be filed with the supreme court within 30

days after the making and entry of the order of the commissioner. The supreme court shall notify the head of the hospital in which the patient is confined and refer the petition to the chief judge of the appeal panel. Written notice by mail shall be given to the patient, the county attorney of the county of commitment, the commissioner, the head of the hospital in which the patient is confined, and such persons as the chief judge may designate, of the time and place of the hearing on such petition. Such notice is to be given not less than 14 days prior to the date of such hearing, which hearing shall be within 45 days of the filing of the petition. Any person may oppose the petition. The appeal panel may appoint examiners, and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all such proceedings. The patient and the county attorney of the committing county shall be entitled to be present and to cross-examine all witnesses. A majority of the appeal panel shall make and enter such orders as they may deem just and equitable and the orders of the appeal panel shall supersede all orders of the commissioner in such cases.

(d) In all proceedings before the appeal panel the patient shall be afforded an opportunity to be represented by counsel, and if neither the patient or others provide counsel the chief judge of the appeal panel shall appoint counsel to represent the patient. The compensation of such appointed counsel shall be determined by the chief judge and the expense thereof shall be borne and paid by the department of public welfare.

(e) The filing with the supreme court of a petition under clause (c) shall immediately suspend the operation of any order for discharge, provisional discharge or release from custody of the patient and said patient shall not thereafter be dis-

charged or released in any manner except upon order of a majority of the appeal panel.

(f) A party aggrieved by an order of the appeal panel may appeal from such decision to the supreme court in the same manner as other appeals in civil actions.

§ 253A.16 REVIEW BOARDS.

* * *

Subd. 5. There shall be established by the commissioner one special review board for mentally ill and dangerous and psychopathic personalities, of three members, all of whom shall be experienced in the field of mental illness. One member of the special review board shall be a physician qualified in the diagnosis of mental illness or mental deficiency, one member shall be an attorney and no member shall be connected with the department of public welfare. This special review board shall meet at least every six months and be otherwise on call of the commissioner and shall hear and consider all petitions for transfer out of the Minnesota security hospital, discharge or provisional discharge filed under and pursuant to sections 253A.14 and 253A.15, and make recommendations to the commissioner concerning the same.

253A.07 JUDICIAL COMMITMENT. Subdivision 1. Any interested person may file in the probate court of the county of the proposed patient's settlement or presence a petition for commitment of a proposed patient, setting forth the name and address of the proposed patient, the name and address of his nearest relatives, and the reasons for the petition. Such petition shall be accompanied either by a written statement by a licensed physician stating that he has examined the proposed patient and is of the opinion that the proposed

patient may be mentally ill, mentally deficient, or inebriate, and should be hospitalized, or by a written statement by the petitioner that, after reasonable effort, the petitioner has been unable to obtain an examination by a licensed physician or that an examination could not be performed. Before filing, a copy of the petition shall be delivered by the petitioner to the county welfare department.

Subd. 2. After the filing of the petition the probate court shall appoint two examiners, at least one of whom shall be a licensed physician. If the proposed patient is alleged to be mentally deficient one of the two examiners shall be skilled in the ascertainment of mental deficiency. If the proposed patient is alleged to be drug dependent and if at least one examiner qualified in the field of alcohol and drug abuse cannot be obtained, the court shall appoint a single examiner plus one additional person qualified in the field of alcohol and drug abuse. The final report submitted to the court shall contain all pertinent information and comments preferred by such qualified person. The court shall issue such orders as may be necessary to provide for the examination of the proposed patient which will be conducted prior to the hearing. The examination shall be held at a hospital, a public health facility, the home of the proposed patient, or such other suitable place as the court shall determine is not likely to have a harmful effect on the health of the proposed patient. No persons shall be present during the examination unless authorized by the examiner. The court may require the examiners to file with the court, prior to the hearing two copies of their report as to the condition of the proposed patient and his need for hospitalization, which report, if filed, shall be available to counsel.

Subd. 3. The court may direct a health or peace officer or any other person to take the proposed patient into custody

and transport him to a public hospital, private hospital consenting to receive him, public health facility, or other institution, for observation, evaluation, diagnosis, emergency treatment, care, and if necessary, confinement. The order of the court may be executed on any day and at any time thereof, by the use of all necessary means including the breaking open of any place in which the proposed patient is located and the imposition of necessary restraint upon the person of such proposed patient. Unless otherwise ordered by the court, a peace officer taking the proposed patient into custody pursuant to this subdivision shall not be in uniform and shall not use a motor vehicle visibly marked as a police vehicle.

Subd. 4. From the time of his admission any patient admitted under the provisions of this section may communicate by all reasonable means with a reasonable number of persons at reasonable hours of the day and night, and may consult privately with an attorney, at least one member of his family, and with a personal physician. Such patient shall be informed in writing at the time of this admission of his right to communicate as herein specified and of his right to a hearing as provided in subdivision 8 of this section.

Subd. 5. If the proposed patient has no settlement in this state, the commissioner shall be notified by the court of the proceedings.

Subd. 6. Notice of the filing of the petition and the order for examination shall be given to the proposed patient, his counsel, one interested person other than the proposed patient's counsel and the petitioner, and such other persons as the court directs. Notice shall be served personally on the proposed patient and unless otherwise ordered by the court such notice shall be served on the proposed patient by a non-uniformed person. The contents of all documents served shall be read to

the proposed patient. If the court has reason to believe that notice would be likely to be injurious to the proposed patient, notice to the proposed patient may be omitted if a guardian ad litem is appointed by the probate court for receipt of such notice. Such guardian shall represent the proposed patient throughout the action on the petition.

Subd. 7. The probate court shall direct the county welfare department to make an investigation into the financial circumstances, family relationships, residence, social history, and background of such patient and make a report thereof in writing to be filed with the court for the use and guidance of the head of the hospital to which such person may be committed. The court may require that such report be filed prior to the commitment hearing.

Subd. 8. The court shall fix a time and place for the hearing which shall be held within 14 days from the date of the filing of the petition. For good cause shown, the court may extend the time of hearing up to an additional 30 days. When any proposed patient has not had a hearing on a petition filed for his commitment within 14 days from the date of filing of said petition, or within the extended time, the proceedings shall be dismissed. The proposed patient, or the head of a hospital or other institution in which the patient is held, may demand in writing at any time that the hearing be held immediately. Unless the hearing is thereafter held within five days of the date of such demand, exclusive of Saturdays, Sundays and legal holidays, the petition shall be automatically discharged if the patient is being held in a hospital or other institution pursuant to court order. For good cause shown, the court may extend the time of hearing on demand up to an additional 10 days.

Subd. 9. The proposed patient, his counsel, one interested person other than his counsel, the petitioner, and such other persons as the court directs shall be given at least five days' notice by the court that a hearing will be held and at least two days' notice of the time and date of the hearing, unless notice is waived by patient's counsel. The commissioner shall be given ten days' notice by mail of a commitment hearing of a person alleged to be mentally deficient unless such notice is expressly waived by the commissioner.

Subd. 10. The proposed patient, the petitioner, and all other persons to whom notice has been given pursuant to subdivision 9 may attend the hearing and, except for the patient's legal counsel, may testify. The court shall notify such persons of their right to attend the hearing and to testify.

Subd. 11. The proposed patient and the petitioner may present and cross-examine witnesses, including examiners, at the hearing and the court may in its discretion receive the testimony of any other person.

Subd. 12. Subject to the proposed patient's right to attend the hearing, the court in its discretion may permit the proposed patient to be absent from the hearing if the person conducting the hearing shall have observed and consulted with the proposed patient prior to the hearing. The court may exclude from the hearing any person not necessary for the conduct of the proceedings except those persons to whom notice was given pursuant to subdivision 9 and any other persons requested to be present by the proposed patient. At the time of the hearing the patient shall not be so under the influence or so suffer the effects of drugs, medication, or other treatment as to be hampered in preparing for or participating in the proceedings. When in the opinion of the licensed physician attending the patient the discontinuance of drugs, medication,

or other treatment is not in the best interest of the patient, the court at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the patient has received during the 48 hours immediately prior to the hearing.

Subd. 13. The hearing shall be conducted in a manner consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. If the proposed patient is to be present, the hearing may be held at a hospital, a public health facility, the proposed patient's residence, or such other suitable and appropriate place as the court may determine. In all such proceedings the court shall keep accurate minutes containing, among other appropriate materials, notations of appearances at the hearing, including witnesses, of motions made and the disposition thereof, and of all waivers of rights made by the parties. The court shall have taken and preserved an accurate stenographic record or tape recording of the proceedings. The court shall not be bound by the evidence presented by the examiners but shall make its determination upon the entire record pursuant to the rules of evidence. In all cases the court shall find the facts specifically, state separately its conclusions of law thereon, and direct the entry of an appropriate judgment. Where commitment is ordered under the provisions of subdivision 17, clause (a) of this section, the findings of fact and conclusions of law shall specifically include the proposed patient's conduct which is a basis for determining that each of the requisites of subdivision 17, clause (a) is met, including less restrictive alternatives to commitment considered and rejected by the court and the reasons for rejecting each alternative.

Subd. 14. The court shall hear any relevant testimony and shall receive all relevant evidence which may be offered at the hearing.

Subd. 15. In all such proceedings the county attorney may appear and represent the petitioner or shall appear and represent the petitioner upon the request of the judge of probate court or the petitioner. The petitioner shall be notified of his right to request that the county attorney appear. The proposed patient shall be afforded an opportunity to be represented by counsel, and if neither the proposed patient nor others provide counsel, the court at the time the examiners or licensed physicians are appointed shall appoint counsel to represent the proposed patient. Counsel shall consult with the proposed patient prior to the hearing and shall be given adequate time to prepare thereto. Counsel shall have the full right of subpoena.

Subd. 16. If, upon completion of the hearing and consideration of the record, the court finds that the proposed patient is not mentally ill, mentally deficient, or an inebriate, it shall terminate the proceedings, dismiss the application, and discharge the proposed patient forthwith.

Subd. 17. If, upon completion of the hearing and consideration of the record which shall be made pursuant to the rules of evidence, the court finds the proposed patient is:

(a) A mentally ill person, and (1) that the evidence of the proposed patient's conduct clearly shows that his customary self-control, judgment, and discretion in the conduct of his affairs and social relations is lessened to such an extent that hospitalization is necessary for his own welfare or the protection of society; that is, that the evidence of his conduct clearly shows: (i) that he has attempted to or threatened to take his own life or attempted to seriously physically harm

himself or others; or (ii) that he has failed to protect himself from exploitation from others; or (ii) that he has failed to care for his own needs for food, clothing, shelter, safety or medical care; and (2) after careful consideration of reasonable alternative, dispositions, including but not limited to, dismissal of petition, out-patient care, informal or voluntary hospitalization in a private or public facility, appointment of a guardian, or release before commitment as provided for in section 253A.12, and finds no suitable alternative to involuntary hospitalization, the court shall commit such patient to a public hospital or a private hospital consenting to receive him, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as hereinafter provided;

(b) Mentally deficient, the court shall appoint the commissioner guardian of the person of the proposed patient and commit him to the care and custody of the commissioner;

(c) A mentally ill person determined to be in need of commitment in accordance with clauses (a) (1) and (2) above, and a person who is dangerous to the public, the court shall commit such patient to a public hospital or a private hospital consenting to receive him, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as hereinafter provided;

(d) An inebriate person, and that commitment to a hospital is necessary for the welfare of the patient or the protection of society, the court shall commit such patient to a public hospital or a private hospital consenting to receive the person, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as hereinafter provided.

Subd. 18. Upon commitment of a mentally deficient patient under subdivision 17, clause (b) , the commissioner may place such patient in an appropriate home, hospital, or institu-

tion, or exercise general supervision over him anywhere in the state outside of any institution through any county welfare board or other appropriate agency authorized by the commissioner.

Subd. 19. Whenever a person is committed under subdivision 17, clause (a) or (c), the court shall issue a warrant in duplicate, committing the patient to the custody of the head of the designated hospital for the care of mentally ill or inebriate persons, and the patient shall be transported to the institution as provided in section 253A.09.

Subd. 20. Upon delivery of a patient committed under subdivision 17, clause (a) or (c), to the hospital to which he is committed, the head of the hospital shall retain the duplicate warrant and endorse his receipt upon the original warrant, which shall be filed in the court of commitment. After such delivery the patient shall be under the control and custody of the head of the designated hospital.

Subd. 21. A copy of the petition for commitment, a copy of the court's findings of fact and conclusions of law, a copy of the court order committing the patient, a copy of the report of the medical examiners, and a copy of the social service report shall be transmitted within 14 days to the head of the hospital receiving such person, or in the case of a mentally deficient patient, to the commissioner.

Subd. 22. The court shall determine the nature and extent of the patient's property and the nature and extent of the property of the persons upon whom liability for such patient's care and support is imposed by law. One copy of such findings shall be filed with the court and another copy shall be transmitted to the commissioner.

Subd. 23. Whenever a patient is committed under subdivision 17, clause (a) or (c), for a 60 day period, he shall be held

at the hospital during such period for observation, evaluation, diagnosis, treatment, and care. Every patient admitted to a hospital under such clause shall be examined by at least one examiner as soon as practicable after admission. Within 60 days from the date of the commitment order the head of the hospital shall file a written statement with the court issuing said order, and a copy thereof with the commissioner and the patient's attorney, setting forth findings as to the condition of the patient; a diagnosis of the patient; whether the patient is in need of further care and treatment; whether such care and treatment, if any, must be provided in a hospital and if so what type; whether the patient must be committed to a hospital; and whether the patient is dangerous to the public.

Subd. 24. If no written statement is filed within 60 days or if the written statement describes the patient as not in need of further institutional care and treatment, the proceedings shall be terminated by the court and the patient shall be discharged from the hospital unless the patient was committed as mentally ill and dangerous to the public or as a psychopathic personality, in which case a further hearing shall be held by the committing court within 14 days after the court's receipt of such statement and the committing court shall then make the final determination.

Subd. 25. If the written statement describes the patient as being in need of further institutional care and treatment, the court shall consider such finding in making its final determination, and the court may order hospitalization of the proposed patient for an indeterminate period. A copy of the final order for commitment shall be forwarded to the head of the proper hospital.

Subd. 26. If, in the case of a person committed under subdivision 17, clause (c), the statement describes the patient as

mentally ill but not dangerous to the public, the patient shall not be committed for an indeterminate period as dangerous to the public except following a hearing as provided for in this section. If the statement describes the patient as mentally ill and dangerous to the public, the court may order hospitalization of the patient for an indeterminate period. Upon the patient's request the court shall conduct a hearing as provided by this section before final determination.

Subd. 27. At any time prior to the expiration of the 60 day period a patient who has not been committed as mentally ill and dangerous to the public or as a pyschopathic personality may be transferred to informal status upon his application in writing with the consent of the head of the hospital. Upon such transfer the head of the hospital shall immediately notify the court in writing and upon receipt of the same the court shall terminate the proceedings.

Subd. 28. During the 60 day period a patient who has not been committed as mentally ill and dangerous to the public or as a pyschopathic personality may be placed on provisional discharge as provided in section 253A.15, but unless such discharge is made absolute before the end of the 60 day period the patient shall remain subject to the same laws, rules, and regulations as other patients committed under sections 253A.01 to 253A.21.

Subd. 29. Patients or other responsible persons are required to pay the necessary hospital charges for patients committed or transferred to private hospitals or institutions.

Subd. 30 When, pursuant to an order of a state or federal district court, a defendant in a criminal proceeding is examined in the probate court, the probate court shall transmit its findings and return the defendant to such district court unless otherwise ordered. A duplicate of the findings shall be

filed in the probate court, but there shall be no petition, property report, or commitment unless otherwise ordered.

§ 253A.21 GENERAL PROVISIONS.

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Subd. 3. Nothing in sections 253A.01 to 253A.21 shall be construed to abridge the right of any person to the writ of habeas corpus.

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Subd. 5. The commissioner or any other aggrieved party may appeal to the district court from any order entered under sections 253A.01 to 253A.21 in the manner prescribed in section 487.39.

Upon perfection of the appeal, the return shall be filed forthwith. The district court shall give the appeal preference over every other proceeding therein. Such appeal shall not suspend the operation of the order appealed from until the appeal is determined, unless otherwise ordered by the district court. Notwithstanding any contrary provision in section 487.39, an appeal may be taken from the determination of a district court judge to the supreme court without leave of the supreme court in cases in which the district court upholds an order committing a person under section 253A.07, subdivision 17 or an order denying a petition under section 253A.19.